

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

Civ. No. 06-12386

Crim. No. 05-80288

vs.

Hon. Gerald E. Rosen

MICHAEL CALLENDAR,

Defendant/Petitioner.

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ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION AND  
DISMISSING PETITIONER'S §2255 ACTION

At a session of said Court, held in  
the U.S. Courthouse, Detroit, Michigan  
on April 19, 2007

PRESENT: Honorable Gerald E. Rosen  
United States District Judge

This matter having come before the Court on the Report and Recommendation of United States Magistrate Judge Paul J. Komives, recommending that the Court deny Petitioner Michael Callendar's § 2255 Motion to Vacate, Set Aside or Correct his Sentence and deny as moot Petitioner's motion for stay of execution of sentence and release on bond, and his motions for a writ of mandamus and other relief; and no timely objections having been filed; and the Court having reviewed the Magistrate Judge's Report and Recommendation and the entire record of this action and having concluded that, for the reasons stated in the Report and Recommendation, the Petitioner's § 2255 motion should be denied and this action, accordingly, should be dismissed and his other motions denied as moot; and the Court being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Petitioner Callendar's § 2255 Motion be, and hereby is, DENIED, and the above-captioned § 2255 action is, accordingly, DISMISSED.

IT IS FURTHER ORDERED that Petitioner's motion for stay of execution and for release on bond (docket # 18) and his motion for a writ of mandamus and other relief (docket # 22 and 23) are denied as moot.

IT IS FURTHER ORDERED that, for the reasons stated by the Magistrate Judge, pursuant to 28 U.S.C. § 2243(c) and 28 U.S.C. § 2255, no certificate of appealability should issue for purposes of appeal of this matter. The Court will also deny Petitioner leave to appeal *in forma pauperis*. A petitioner seeking to appeal the denial of a habeas petition or a § 2255 motion will not be permitted to proceed *in forma pauperis*, where the appeal would be frivolous. *Hence v. Smith*, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999).

s/Gerald E. Rosen

Gerald E. Rosen

United States District Judge

Dated: April 19, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 19, 2007, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager